

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL REVISION APPLICATION No.601 of 2001****For Approval and Signature:****HONOURABLE MR.JUSTICE BANKIM N. MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment?
- 2 To be referred to the Reporter or not?
- 3 Whether Their Lordships wish to see the fair copy of the judgment?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
- 5 Whether it is to be circulated to the Civil Judge?

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**NILESH SHANITLAL THAKKAR - Petitioner  
Versus  
STATE OF GUJARAT & ORS. - Respondents**

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**= Appearance :**

MR NV ANJARIA for Petitioner.  
MR KC SHAH, APP for Respondent No.1.  
MR PUNAM G GADHVI for Respondent No.2.

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**CORAM : HONOURABLE MR. JUSTICE BANKIM N. MEHTA****Date : 14/12/2007****ORAL JUDGMENT**

The petitioner has filed this application under Section 397

read with 401 of the Code of Criminal Procedure, 1973 [*“the Code”* for short] and challenged the judgment and order dated 8<sup>th</sup> November 2001 rendered by the learned Joint Judicial Magistrate First Class, Mandvi, in Criminal Case No.887 of 1998 whereby the learned Magistrate acquitted the respondent No.2-accused for the offences punishable under Sections 279 and 338 of the Indian Penal Code [*“IPC”* for short] and Sections 177 and 184 of the Motor Vehicles Act, 1988 [*“MV Act”* for short].

2. On the basis of the complaint filed by complainant Nilesh Shantilal Thakkar before Mandvi Police Station, an offence was registered as I-C.R.No.124 of 1997 for the offences punishable under Sections 279 and 338 of the IPC and Sections 177 and 184 of the MV Act and the investigation was started. On completion of the investigation, charge-sheet for the aforesaid offences came to be filed before the learned Judicial Magistrate First Class, Mandvi. The learned Magistrate framed charge at Exhibit 13 for the aforesaid offences against the respondent No.2-accused, who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced the evidence to prove the charge.

On completion of recording of the evidence, incriminating circumstances appearing in the evidence were explained to

the respondent No.2-accused, who in his further statement recorded under Section 313 of the Code, stated that he has been falsely implicated in the offence and filed documents in support of his defence.

3. After hearing the learned Public Prosecutor for the State and the learned advocate for the accused, the learned Magistrate came to the conclusion that the prosecution has failed to prove the charge levelled against the respondent No.2-accused and, therefore, acquitted him for the offence charged against him.
4. Being aggrieved by the said decision, the petitioner-original complainant has preferred this Revision Application.
5. I have heard Mr.Nilay Anjaria, learned advocate for the petitioner, Mr.K.C.Shah, learned Additional Public Prosecutor for the respondent No.1-State, and Mr.P.G.Gadhvi, learned advocate for the respondent No.2, at length and in great detail. I have also perused the Record & Proceedings of the case.
6. It appears from the prosecution case that the respondent No.2-accused was in control of S.T. Bus No.994 on 1<sup>st</sup> November 1997 and driving the vehicle in rash and negligent

manner near G.T.Road at Mandvi and caused grievous hurt to the complainant on his leg by causing fracture.

In order to prove the charge, the prosecution examined the complainant Nilesh Shantilal (PW-1) at Exhibit 24. According to the witness, the incident occurred on 1<sup>st</sup> November 1997 at 7.45 P.M on Mandvi-Laija Road near High-School while he was going with his friend Bhuvnesh Manilal and Paresh Dhirajlal. According to him, the driver of the bus was driving his vehicle in rash and negligent manner, which caused injury on his right leg. The witness has not identified the driver of the vehicle. The witness has admitted that on account of new year, there were people near the place of incident and has also admitted that at the time of incident, his attention was towards the road going to the garden. He has also admitted that he did not know about the speed of the vehicle as it was coming from his rear.

This evidence indicates that the incident took place near a busy locality on the main road. It also appears that the witness was not in a position to know about the speed of vehicle as it came from behind. and caused injury. The witness has not implicated the respondent-accused in the incident nor has identified him in the Court. It appears from the report annexed with F.I.R. that the alleged incident occurred at 19.45 hours on 1<sup>st</sup> November 1997 and information was given to the Police on 2<sup>nd</sup> November 1997 at

15.45 hours. There is no explanation with regard to delay caused in filing the complaint.

7. The prosecution examined Bhuvnesh Jumakhlal [PW-4] at Exhibit 34. The witness was allegedly with the injured at the time of incident. According to the witness, the bus came from their rear and caused the accident. The witness has not deposed about the speed of the vehicle. It also appears from the evidence of this witness that he was friend of the injured. The evidence also indicates that after the incident, people assembled at the place of incident. The evidence of this witness does not indicate that the driver of the vehicle was driving it in rash and negligent manner and caused the accident.
8. The prosecution examined Pareshkumar Dhirajlal [PW-5] at Exhibit 37. According to this witness, when he was going towards garden with the injured and Bhuvnesh (PW-4), at that time the bus came in excessive speed and caused the accident. The evidence of this witness indicates that he was friend of injured Nilesh.
9. In view of the above, it appears that though the accident took place in the busy locality, no independent witness was examined by the prosecution to prove rash and negligent

driving. In view of the fact that the witnesses examined to prove =rash and negligent driving were the friends of the injured and also in view of the fact that the bus came from their behind, it would be difficult to believe that these witnesses could have noticed that the bus was in excessive speed and was being driven in rash and negligent manner.

10. The prosecution produced *panchnama* of scene of offence at Exhibit 28. It appears to have been drawn between 7.30 and 8.00 A.M. on 2<sup>nd</sup> November 1997. However, this *panchnama* does not throw any light on the place of incident. Therefore, the *panchnama* cannot be relied upon to connect the respondent-accused with the offence.
11. The prosecution examined Mohmmmed Dawood Khatri (PW-6) at Exhibit 30. The witness was the doctor who treated the injured at the hospital. According to the witness, the injured had grievous injury on his leg and such injury was possible by vehicular accident. The witness has admitted that he has not mentioned in the certificate about the cause of injury. The certificate annexed with the deposition indicates that it was crush injury.
12. In view of the fact that no independent witness has been examined to prove that the vehicle was being driven in rash

and negligent manner and caused the accident, it would not be safe to rely upon the sole evidence of two witnesses, who were friends of the injured. It also appears that at the time of the accident, many people assembled at the place of incident. However, no independent witness has been examined. Therefore, it would be difficult to believe that the respondent-accused drove the vehicle in rash and negligent manner. It also appears that there is no investigation with regard to the route of the bus.

13. It is settled proposition that an order of acquittal passed by a trial Court should be sparingly interfered with by the High Court in its revisional jurisdiction. The interference with the order passed by the trial Court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial Court has overlooked material evidence. Therefore, ordinarily, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the trial Court unless glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. Therefore, the High Court in its revisional power does not ordinarily interfere with judgment of acquittal passed by the

trial Court unless there has been manifest error of law or procedure.

14. In the case on hand, the petitioner has failed to point out that there is glaring illegality or that the trial Court has overlooked the material evidence or that the finding is erroneous or perverse. It is also not indicated that there is manifest error of law or procedure. Therefore, the learned trial Judge was justified in acquitting the respondent-accused.

In view of the above, Revision Application fails and stands dismissed. Rule is discharged.

***[Bankim N. Mehta, J.]***

***Rajendra***